IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 283 OF 2005
IN
SUMMARY SUIT NO. 3004 OF 2004

Akai Consumer Electronics (I) Ltd. ..Plaintiffs.

Versus

Gala and Sons and Anr. ..Defendants.

Mr. L.V. Jain for the Plaintiffs.
Mr. Vishal Thakker for the Defendants.

CORAM : S. J. VAZIFDAR, J.
DATED : 23rd NOVEMBER,2005.

P.C.:

1. The suit is filed to recover the price of goods sold and delivered by the plaintiffs to the defendants.

2. It is admitted by the learned counsel appearing on behalf of the defendants that the goods were sold on the terms and conditions mentioned in the suit invoices. It is also admitted that the said goods were received by the defendants.

3. Three defences have been raised. The first defence is that no rate of interest has been mentioned in the invoices. That defence is well-founded. The first time that interest was claimed by the plaintiffs' was by its Advocate's letter dated 7th

November, 2002. Thus the plaintiffs would be entitled to interest only from 7th November, 2002.

4. The second defence is that the business had been on the basis of the running account between the parties. According to the defendants there were current and mutual accounts between the plaintiffs and the defendants in respect of the suit transaction. In paragraph 5 the only averment is that the plaintiffs have picked and chosen some of the bills without disclosing the total transaction. There is no plea that the account was an open, mutal and current account.

5. Though the account is not annexed to the affidavit in reply, a copy of the account was tendered in the court. That account pertains to another firm. It does not pertain to the plaintiffs. Merely because the same may be a group concern, it does not disentitle the plaintiffs to make a claim in respect of the transaction entered upon but independently.

6. The last defence is that the goods were defective. About nine months after the goods were delivered, the defendants addressed a letter dated 24th August, 2002 to the plaintiffs. By the said

letter, the defendants called upon the plaintiffs to take the stock back and issue appropriate credit notes. It is not stated therein that the goods were defective.

7. Moreover, Clause 3 of the terms and condition of sale of the invoice reads as under :-

> "3) Sale Return must be done within three months, after three months 10% of dealers price will be deducted for each month, but no return will be accepted in any case after six months from the bill date."

8. In the circumstances, the defendants are not entitled to insist upon the plaintiffs taking back the stock sold over six months before. There is no defence to the suit except with regard to interest, as stated above.

9. The summons for judgment is made absolute and the suit is decreed as prayed in the sum of Rs. 1,38,003/- together with interest thereon at the rate of 12% from 07.11.2002 till payment and or realization.

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